

# **EXHIBIT A**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

DENNY MARTIN,

Plaintiff,

-against-

BERKSHIRE LIFE INSURANCE  
COMPANY OF AMERICA,

Defendant.

Index No.: 656158/2020  
Date Filed: 11/10/2020

**SUMMONS**

Plaintiff designates New York  
County as the place of trial.

The basis of venue is plaintiff's  
residence.

Plaintiff resides in New York  
County.

**TO THE ABOVE NAMED DEFEDANT:**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with the summons, to serve a notice of appearance, on the plaintiff's attorney at the address set forth below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if this summons is not delivered personally to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Kew Gardens, New York  
November 10, 2020

**Defendant's Address:**

Berkshire Life Insurance  
Company of America,  
700 South Street  
Pittsfield, MA 01201-8285

**LIPSIUS-BENHAIM LAW LLP**  
*Attorneys for Plaintiff*

By: 

Ira S. Lipsius, Esq.  
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**FILED: NEW YORK COUNTY CLERK 11/10/2020 10:37 AM**

INDEX NO. 656158/2020

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 11/10/2020

**NOTICE OF COMMENCEMENT OF ACTION  
SUBJECT TO MANDATORY ELECTRONIC FILING**

**PLEASE TAKE NOTICE** that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.S-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) 13) of that Section. The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.S-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings. Exemptions from mandatory e-filing are limited to: (1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and (2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to section 202.5-bb, consult the NYSCEF website at [www.nycourts.gov/efile](http://www.nycourts.gov/efile) or contact the NYSCEF Resource Center at 646-386-3033 or [efile@courts.state.ny.us](mailto:efile@courts.state.ny.us).

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
DENNY MARTIN,

Plaintiff,

-against-

BERKSHIRE LIFE INSURANCE  
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Defendant.  
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Index No.: 656158 /2020

**COMPLAINT**

**PLAINTIFF DEMANDS  
TRIAL BY JURY**

Plaintiff, Denny Martin, by his attorneys, Lipsius BenHaim Law, LLP, for his complaint,  
alleges as follows:

**THE PARTIES**

1. Plaintiff, Denny Martin, MD ("Dr. Martin") is a New York resident.
2. Defendant, Berkshire Life Insurance Company of America ("Berkshire") is a Massachusetts corporation and at all times relevant was licensed to do business in the State of New York.

**THE INSURANCE POLICIES**

3. Berkshire issued insurance policy number Z2195350 to Denny Martin, MD providing "Total Disability and Residual Disability benefits" insuring Denny Martin, MD ("5350 Policy").
4. The 5350 Policy provides Disability Income Insurance benefits of \$7,650 monthly with annual cost of living increases.
5. Berkshire issued insurance policy number Z2195360 to Denny Martin, MD providing "Total Disability and Residual Disability benefits" insuring Denny Martin, MD ("5360 Policy").

6. The 5360 Policy provides Disability Income Insurance benefits of \$500 monthly with annual cost of living increases and a maximum benefit until Dr. Martin's 65<sup>th</sup> birthday.

7. Berkshire issued insurance policy number Z9651050 to Denny Martin, MD providing "Total Disability and Residual Disability benefits" insuring Denny Martin, MD ("1050 Policy").

8. The 1050 Policy provides Disability Income Insurance benefits of \$2,350 monthly with annual cost of living increases.

9. Berkshire issued insurance policy number Z9651060 to Denny Martin, MD providing "Total Disability and Residual Disability benefits" insuring Denny Martin, MD ("1060 Policy").

10. The 1060 Policy provides Disability Income Insurance benefits of \$4,500 month with annual cost of living increases and with a maximum benefit until Dr. Martin's 65<sup>th</sup> birthday.

11. Berkshire issued insurance policy number Z9836160 to Denny Martin, MD providing "Total Disability and Residual Disability benefits" insuring Denny Martin, MD ("6160 Policy").

12. The 6160 Policy provides Disability Income Insurance benefits of \$1,000 monthly with annual cost of living increases and with a maximum benefit until Dr. Martin's 65<sup>th</sup> birthday.

13. Berkshire issued insurance policy number Z3141490 to Denny Martin, MD providing Overhead Expense Disability Insurance insuring Denny Martin, MD ("1490 Policy").

14. The 1490 Policy provides Business Overhead Expense Disability Insurance coverage benefits of \$20,000 monthly with a maximum benefit of 18 months.

15. Berkshire issued insurance policy number Z9829350 to Denny Martin, MD providing Overhead Expense Disability Insurance insuring Denny Martin, MD ("9350 Policy").

16. The 9350 Policy provides Business Overhead Expense Disability Insurance coverage benefits of \$20,000 monthly with a maximum benefit of 12 months.

17. Berkshire issued insurance policy number Z3949760 to Denny Martin, MD providing Overhead Expense Disability Insurance insuring Denny Martin, MD (“9760 Policy”).

18. The 9760 Policy provides Business Overhead Expense Disability Income Insurance coverage benefits of \$10,000 monthly with a maximum benefit of 12 months.

### **DR. MARTIN BECOMES DISABLED**

19. From 2009 until October 2019, Dr. Martin continuously practiced medicine as a licensed medical doctor.

20. For the twelve months prior to October 1, 2019 Dr. Martin practiced medicine.

21. During the late spring and summer of 2019 Dr. Martin experienced extreme pain.

22. As a result of the pain Dr. Martin sought medical care.

23. As a result of the pain Dr. Martin reduced the hours he practiced medicine.

24. Effective October 1, 2019 Dr. Martin virtually ceased practicing medicine.

25. Effective October 1, 2019 Dr. Martin, as a result of pain ceased practicing medicine.

26. On October 8, 2019 Dr. Martin was diagnosed with conditions which do not permit him to work.

27. On October 8, 2019 Dr. Martin was diagnosed with Trigeminal Neuralgia.

28. As a result of the Trigeminal Neuralgia Dr. Martin is unable to work.

29. As a result of the Trigeminal Neuralgia Dr. Martin is disabled.

30. On November 13, 2019 Dr. Martin was diagnosed with Cervical Myelopathy.

31. As a result of the Cervical Myelopathy Dr. Martin is unable to work.

32. As a result of the Cervical Myelopathy Dr. Martin is disabled.

33. Dr. Martin remains disabled.
34. On or about October 12, 2019, Dr. Martin provided notice of a disability claim to Berkshire.
35. Dr. Martin sought payment under the 5350 Policy.
36. Pursuant to the terms of the 5350 Policy, Dr. Martin is entitled to benefits.
37. Berkshire has denied benefits to Dr. Martin under the 5350 Policy.
38. Berkshire has wrongfully denied benefits to Dr. Martin under the 5350 Policy.
39. Dr. Martin sought payment under the 5360 Policy.
40. Pursuant to the terms of the 5360 Policy, Dr. Martin is entitled to benefits.
41. Berkshire has denied benefits to Dr. Martin under the 5360 Policy.
42. Berkshire has wrongfully denied benefits to Dr. Martin under the 5360 Policy.
43. Dr. Martin sought payment under the 1050 Policy.
44. Pursuant to the terms of the 1050 Policy, Dr. Martin is entitled to benefits.
45. Berkshire has denied benefits to Dr. Martin under the 1050 Policy.
46. Berkshire has wrongfully denied benefits to Dr. Martin under the 1050 Policy.
47. Dr. Martin sought payment under the 1060 Policy.
48. Pursuant to the terms of the 1060 Policy, Dr. Martin is entitled to benefits.
49. Berkshire has denied benefits to Dr. Martin under the 1060 Policy.
50. Berkshire has wrongfully denied benefits to Dr. Martin under the 1060 Policy.
51. Dr. Martin sought payment under the 6160 Policy.
52. Pursuant to the terms of the 6160 Policy, Dr. Martin is entitled to benefits.
53. Berkshire has denied benefits to Dr. Martin under the 6160 Policy.
54. Berkshire has wrongfully denied benefits to Dr. Martin under the 6160 Policy.

55. Dr. Martin sought payment under the 1490 Policy.
56. Pursuant to the terms of the 1490 Policy, Dr. Martin is entitled to benefits.
57. Berkshire has denied benefits to Dr. Martin under the 1490 Policy.
58. Berkshire has wrongfully denied benefits to Dr. Martin under the 1490 Policy.
59. Dr. Martin sought payment under the 9350 Policy.
60. Pursuant to the terms of the 9350 Policy, Dr. Martin is entitled to benefits.
61. Berkshire has denied benefits to Dr. Martin under the 9350 Policy.
62. Berkshire has wrongfully denied benefits to Dr. Martin under the 9350 Policy.
63. Dr. Martin sought payment under the 9760 Policy.
64. Pursuant to the terms of the 9760 Policy, Dr. Martin is entitled to benefits.
65. Berkshire has denied benefits to Dr. Martin under the 9760 Policy.
66. Berkshire has wrongfully denied benefits to Dr. Martin under the 9760 Policy.
67. Berkshire has failed to pay disability benefits to Dr. Martin.
68. Berkshire has breached its contracts with Dr. Martin.
69. Dr. Martin is entitled to an amount in excess of \$800,000 from Berkshire as a result of Berkshire's breach.
70. Dr. Martin is entitled to continued disability.

**WHEREFORE**, Plaintiff respectfully request that this Court enter judgment against Berkshire as follows:

1. Judgment in favor of Dr. Martin for past and future benefits, the precise amount to be determined by this Court, pursuant to the terms of the Policies of Insurance issued to Dr. Martin;
2. Interest at the statutory rate of 9%;
3. Costs;



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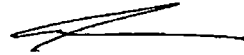
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4. Attorney fees; and
5. Such other and further relief as this Court may deem just and proper.

Dated: Kew Gardens, New York  
November 10, 2020

**LIPSIUS-BENHAIM LAW, LLP**  
*Attorneys for Plaintiff*

By: \_\_\_\_\_



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**SUPREME COURT OF THE STATE OF NEW YORK  
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DENNY MARTIN

Plaintiff/Petitioner,

- against -

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BERKSHIRE LIFE INSURANCE  
COMPANY OF AMERICA

Defendant/Respondent.  
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**NOTICE OF ELECTRONIC FILING  
(Mandatory Case)  
(Uniform Rule § 202.5-bb)**

**You have received this Notice because:**

- 1) The Plaintiff/Petitioner, whose name is listed above, has filed this case using the New York State Courts E-filing system ("NYSCEF"), and
- 2) You are a Defendant/Respondent (a party) in this case.

● **If you are represented by an attorney:**

Give this Notice to your attorney. (Attorneys: see "Information for Attorneys" pg. 2).

● **If you are not represented by an attorney:**

**You will be served with all documents in paper and you must serve and file your documents in paper, unless you choose to participate in e-filing.**

**If you choose to participate in e-filing, you must have access to a computer and a scanner or other device to convert documents into electronic format, a connection to the internet, and an e-mail address to receive service of documents.**

**The benefits of participating in e-filing include:**

- serving and filing your documents electronically
- free access to view and print your e-filed documents
- limiting your number of trips to the courthouse
- paying any court fees on-line (credit card needed)

**To register for e-filing or for more information about how e-filing works:**

- visit: [www.nycourts.gov/efile-unrepresented](http://www.nycourts.gov/efile-unrepresented) or
- contact the Clerk's Office or Help Center at the court where the case was filed. Court contact information can be found at [www.nycourts.gov](http://www.nycourts.gov)


To find legal information to help you represent yourself visit [www.nycourthelp.gov](http://www.nycourthelp.gov)

**Information for Attorneys  
(E-filing is Mandatory for Attorneys)**

An attorney representing a party who is served with this notice must either:

- 1) immediately record his or her representation within the e-filed matter on the NYSCEF site [www.nycourts.gov/efile](http://www.nycourts.gov/efile) ; or
- 2) file the Notice of Opt-Out form with the clerk of the court where this action is pending and serve on all parties. Exemptions from mandatory e-filing are limited to attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the knowledge to operate such equipment. [Section 202.5-bb(e)]

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at [www.nycourts.gov/efile](http://www.nycourts.gov/efile) or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: [nyscef@nycourts.gov](mailto:nyscef@nycourts.gov)).

Dated: 11/10/2020 

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2/24/20